

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Eric Little,

Complainant,

vs.

San Diego Gas and Electric,

Defendant.

Case 04-08-011
(Filed August 10, 2004)

**ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S
RULING ISSUING TEMPORARY RESTRAINING ORDER**

1. Summary

This ruling grants the request of complainant Eric Little (Little) for a temporary restraining order (TRO) against defendant San Diego Gas and Electric Company (SDG&E), restraining SDG&E from commencing or continuing any construction work on any part of the project it described in Advice Letter 1520-E (AL 1520-E), filed September 9, 2003, as explained and expanded in this proceeding, and including the Scripps Lake Conversion Surcharge Undergrounding Project, until this proceeding is concluded, or until further order of the undersigned or of the Commission.

2. Background

This proceeding arises from AL 1520-E, submitted September 9, 2003, by SDG&E. In AL 1520-E, SDG&E presented its plans to increase transmission

capacity between the Sycamore Canyon Substation (Sycamore Substation) and the Miramar Substation in San Diego by adding a new tie line, TL 6942, running from Miramar Substation to Scripps Substation and then to Sycamore Substation, and reconductoring existing TL 669, running between Miramar Substation and Scripps Substation.

In AL 1520-E, SDG&E claimed exemption from the requirements for a Permit to Construct (PTC) under General Order (GO) 131-D Section III.B. SDG&E stated that the project was exempt because the overhead portion of the construction would be putting additional conductors on structures already built (Section III.B.1(e)) or intersetting poles (Section III.B.1(c)), and the underground portion would be located in existing SDG&E franchises or easements (Section III.B.1(g)).

No protests were filed to the advice letter, which then became effective October 19, 2003. In the spring of 2004, residents in the vicinity of the project contacted Commission staff with objections to the project. By letter dated July 28, 2004, staff informed the residents that their objections were too late to be considered as protests to the AL 1520-E project. This complaint was subsequently filed by Little on August 10, 2004, pursuant to Section XIV.A of GO 131-D.¹

In the complaint, Little requested that a TRO be issued. After hearing argument on this request on September 3, 2004 and receiving additional

¹ Eric Little is the only named complainant. He is vice president of the Loire Valley Homeowner's Association, an association of homeowners in the vicinity of the project. In response to a question raised by SDG&E, he submitted the signatures of more than 100 homeowners attesting to their knowledge of the complaint and their willingness to have it go forward.

information from the parties, the Administrative Law Judge (ALJ) issued a ruling, dated September 14, 2004, holding the TRO request in abeyance and requiring that SDG&E, if it wished to commence construction prior to the prehearing conference (PHC), must consult with Commission staff prior to construction. At the PHC on September 27, 2004, the ALJ orally ruled that SDG&E was not to perform any work on the project prior to October 8, 2004, to allow thorough consideration of the TRO request in the light of the information that has been developed to date. This restriction was extended through October 19, 2004 by a ruling of the assigned Commissioner and the ALJ dated October 7, 2004.

3. Project Description

3.1 The project in AL-1520-E

As summarily described in AL-1520-E, the project proposed by SDG&E had two parts. A new 10-mile long, 69 kilovolt (kV) tie line (TL 6942) would be built from Sycamore Substation to Scripps Substation and then to Miramar Substation. TL 6942 would be built by installing a new circuit on the poles for two existing SDG&E lines, TL 6916 from Sycamore Substation to Scripps Substation, and TL 669 from Scripps Substation to Miramar Substation.

About eight miles of the new TL 6942 would be overhead, and about two miles would be underground. The overhead construction for TL 6942 would require replacing about 27 of the 107 existing wood poles on the entire route. The replacement poles would be either heavier wood or steel. Six new wood poles would be interset. The underground construction would require four new steel cable poles, one at each of Sycamore and Miramar Substations and two for a small (0.2 mile) underground section in the Scripps Ranch area. The location of

the balance of the approximately two miles of underground construction was not specified beyond being “placed in franchise position.”

The second part of the project described in AL 1520-E was reconductoring existing TL 669, which runs between Scripps Substation and Miramar Substation for approximately 3.3 miles.²

3.2 The actual project

As noted above, the information provided in AL 1520-E is very summary. The project description set out below is pieced together from AL 1520-E, several written submissions by the parties in this proceeding, and oral representations made by the parties at the TRO argument and the PHC.

New TL 6942 will be run on poles for TL 669 from Miramar Substation to Scripps Substation and will then run underground to bypass Scripps Substation. The next underground segment is planned to be approximately 1.5 miles, running from Scripps Substation under Scripps Ranch Boulevard to a little south of Ironwood Drive. The new TL 6942 will then go overhead with TL 6916. At Rue Biarritz, TL 6942 will go for a short distance (0.2 miles) in an existing underground conduit, and will then run overhead again with TL 6916 to Sycamore Substation.

The overhead portion of new TL 6942 combined with the reconductoring of existing TL 669 between Miramar and Scripps Substations will require the replacement of all 37 wood poles currently supporting TL 669. Heavier wood poles will replace eight wood poles; steel poles will replace 29 wood poles. One

² A construction plan, numbered 50027 and dated September 10, 2004 (Plan 50027), submitted by SDG&E in this proceeding, identifies the length of TL 669 to be reconducted as 2.3 miles. At this time, it is unclear if this discrepancy is meaningful.

new pole will also be required. The Scripps Substation-Sycamore Substation segment will require replacement of one existing wood pole with a heavier wood pole, and replacement of 22 existing wood poles with steel poles. Five new wood poles will be interset and four new cable poles will be put up.³

The principal underground portion of new TL 6942 will be in newly built conduit. SDG&E represents that the conduit is part of another project, which it calls the Scripps Lake Conversion Surcharge Undergrounding Project (Scripps Lake underground project). Such undergrounding projects are typically undertaken for aesthetic reasons, with substantial input from the local government, and are paid for with dedicated surcharge funds. Because neither an application nor an advice letter was filed with the Commission for the Scripps Lake underground project, the project description here relies on information provided at the PHC and in post-PHC submissions.

The Scripps Lake underground project removes an overhead section of TL 6916 along Scripps Lake Drive and reroutes the line underground, under Scripps Ranch Boulevard, for approximately 1.5 miles to Scripps Substation, where TL 6916 terminates. This conduit is designed to accommodate the undergrounding of both existing TL 6916 and new TL 6942. SDG&E's post-PHC submission shows an additional piece of the Scripps Lake underground project extending west of Scripps Substation, which must be the underground conduit for the bypass of Scripps Substation by new TL 6942. SDG&E represents that cable pole construction observed by Little and other homeowners at a location

³ Some of the new and replacement poles will be "direct buried" in the ground; some will be placed in concrete foundations. Despite repeated requests, SDG&E has not yet identified which poles will be put up using which method.

south of Ironwood Drive on September 19 and 20, 2004 is part of the Scripps Lake underground project. The cable pole appears to be at the eastern end of the undergrounding. Once the undergrounding is completed, poles from the overhead segment of TL 6916 replaced by the underground segment will be removed.

4. Environmental Setting

The project extends on both sides of Interstate 15 in the Scripps Ranch area of San Diego. This area was subject to the devastating Cedar fire in late October and early November 2003. Large regions of vegetation and many structures were burned in that fire. The project area also includes or is close to habitat of the Coastal California Gnatcatcher (Gnatcatcher), which has been designated a threatened species under the federal Endangered Species Act, 16 U.S.C. Section 1531 *et seq.*

The project runs through Area D of the former Camp Elliott, a military facility that was closed in the 1940's. Part of Camp Elliott was incorporated into Marine Corps Air Station Miramar; part was sold as surplus property. Under the Formerly Used Defense Sites (FUDS) program, the Army Corps of Engineers assesses and cleans up property previously used by the military around the country.⁴ The Army Corps of Engineers is currently studying the former Camp Elliott, including Area D, for the presence and extent of unexploded ordnance (UXO) and other explosives.⁵

⁴ This program is a part of the Defense Environmental Restoration Program, established by Congress in 1986. See 10 U.S.C. Section 2701 *et seq.*

⁵ Information is available at www.formercampelliott.com.

5. Discussion

5.1 Legal standards

The Commission's authority to provide injunctive relief is firmly rooted in the California Constitution, the Public Utilities Code, and case law.

The Commission is not an ordinary administrative agency, but a constitutional body with broad legislative and judicial powers. The California Constitution, Article XII, Sections 1-6, grants the Commission plenary power over the regulation of public utilities. The Commission has broad authority to regulate public utilities, including the power to fix rates, hold hearings, and establish its own rules and procedures. [citations omitted] Our reliance in the Interim Decision on Pub. Util. Code Section 701 and *Consumers' Lobby* is well founded. We noted that in *Consumers' Lobby*, [25 Cal.3d at 907] the California Supreme Court recognized that the Commission has equitable jurisdiction, which permits it to issue injunctions: 'The commission often exercises equitable jurisdiction as an incident to its express duties and authority. For example, the Commission may issue injunctions in aid of jurisdiction specifically conferred upon it. [citations omitted.]'

Southern California Edison Company et al., Decision (D.) 01-07-033, 2001 Cal. PUC LEXIS 877 **11-12.

An individual assigned Commissioner or ALJ may issue a temporary restraining order or preliminary injunction in order to preserve the status quo, subject to its ratification or alteration by the full Commission. (See the California Constitution, Article XII, Section 2 ["Any commissioner as designated by the commission may hold a hearing or investigation or issue an order subject to commission approval."]; see also Pub. Util. Code Section 310; *Systems Analysis and Integration, Inc. dba Systems Integrated v. Southern California Edison Company*, D.96-12-023, 69 CPUC2d 516, 522 [ALJ issued temporary restraining order on November 21 and a preliminary injunction on November 30, and dissolved the

injunction on March 21. The Commission issued its decision the following December].)

The Commission uses the same test for temporary restraining orders that it uses for preliminary injunctions. (See *Westcom Long Distance, Inc. v. Pacific Bell et al.*, D.94-04-082, 54 CPUC 2d 244, 259; see also *Re Standards of Conduct Governing Relationships Between Energy Utilities and Their Affiliates*, D.98-12-075, 84 CPUC2d 155, 169.) To obtain a temporary restraining order, the moving party must show (1) a likelihood of prevailing on the merits; (2) irreparable injury to the moving party without the order; (3) no substantial harm to other interested parties; and (4) no harm to the public interest.

We emphasize at the outset that this ruling is not a final ruling on the merits and should not be construed as prejudging the ultimate outcome of this proceeding. Rather, we examine Little's likelihood of success on the merits and balance the hardships and harms based on the showings made in the record of this proceeding to date. The evidence brought forth at the evidentiary hearing to be held in this case and the arguments made by the parties in their closing briefs will be fully evaluated and considered in the Presiding Officer's Decision.

Although this ruling is not a final decision on the merits of the parties' positions in this proceeding, consideration of the likelihood of Little's ultimate success on the merits does affect the balancing of the respective hardships between Little and SDG&E. For example, the more likely it is that a complainant will prevail, the less severe must be the alleged harm if injunctive relief does not issue. (See *King v. Meese* (1987) 43 Cal.3d 1217, 1227; see also *Los Angeles Memorial Coliseum Com'n v. Nat. Football* (9th Cir. 1980) 634 F.2d 1197, 1201 and 1203 [requiring a showing of all required elements for injunctive relief, and defining the analysis as discretion exercised along a "single continuum," such

that a “minimal showing on the merits is required even when the balance of harms tips decidedly toward the moving party. Conversely, at least a minimal tip in the balance of hardships must be found even when the strongest showing on the merits is made.”)) We will apply these standards in evaluating this request.

5.2 Likelihood of success on the merits

The project:

The project SDG&E is building is not the project described in AL 1520-E, in four significant respects. First, as elucidated in this proceeding to date, SDG&E is completely rebuilding existing TL 669. When this project is completed, every existing wood pole for TL 669 will have been replaced and one new pole will have been added. The wires on those poles will be completely new — the wires for the reconductoring of TL 669 and the wires for new TL 6942.

Second, SDG&E is replacing a large number of poles on existing TL 6916. Of the approximately 70 existing wood poles, one is being replaced with a heavier wood pole and 22 are being replaced with steel poles.⁶ Overall, 60 existing poles are being replaced, rather than the 27 poles identified in AL 1520-E.

⁶ Approximately 30 poles are being removed once the undergrounding portion of the project is completed.

Third, new TL 6942 will bypass Scripps Substation by running underground around it. In AL 1520-E, TL 6942 is described as running to Scripps Substation from Miramar Substation and then out again to Sycamore Substation.⁷

Fourth, the majority of the underground portion of new TL 6942 is being built under the aegis of the Scripps Lake underground project. The existence of this project was not disclosed to the Commission until SDG&E responded to Little's claim in this proceeding that SDG&E was building TL 6942 in violation of the ALJ's ruling of September 14, 2004.

We conclude that Little is likely to succeed on the merits of his claim that SDG&E is not entitled to exemption from the requirement of a PTC for the overhead portion of the work on this project. In AL 1520-E, SDG&E claimed exemption under GO 131-D Section III.B.1.(e), covering "the placing of new or additional conductors, insulators, or their accessories on supporting structures already built." Between Scripps Substation and Miramar Substation, new conductors will be placed on supporting structures that did not exist when AL 1520-E was submitted — the 37 replacement poles. Between Scripps Substation and Sycamore Substation, additional conductors will be placed on supporting structures of which approximately one-third did not exist when AL 1520-E was submitted — the 23 replacement poles. These structures are not, for the purposes

⁷ At the PHC, SDG&E initially adhered to the description of new TL 6942 running into and then out of Scripps Substation. After it was pointed out that Plan 50027 showed new TL 6942 bypassing Scripps Substation, SDG&E confirmed the bypass plan.

of this project, “already built;” constructing them is part of the project itself. This exemption is therefore inapplicable.⁸

Environmental issues:

GO 131-D provides that the exemptions found in Section III.B.

. . shall not apply when any of the conditions specified in CEQA Guidelines Section 15300.2 exist:

- a. there is reasonable possibility that the activity may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped and officially adopted pursuant to law by federal, state, or local agencies; or
- b. the cumulative impact of successive projects of the same type in the same place, over time, is significant; or
- c. there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.⁹

That is, if any of the specified conditions exist, the project is not exempt from the PTC requirement.

Little claims that there are two sets of unusual circumstances in this case, each of them related to safety. As SDG&E notes, the unusual circumstances exception applies only when a project has characteristics that distinguish it from the usual run of projects in the exempt category. See *Fairbank v. City of Mill*

⁸ Little also challenges the applicability of the exemption in subsection B.1.(g) to the project. Though he raises important questions going to the merits on this point, this is a legal question on which there has been no briefing. Thus, on the present record he has not demonstrated a likelihood of prevailing on the merits of this claim.

⁹ The Guidelines implementing the California Environmental Quality Act (CEQA), Pub. Res. Code § 21000 *et seq.*, are found at 14 Cal. Code Regs. Section 15000 *et seq.*

Valley (1999) 75 Cal.App.4th 1243. We discuss the two sets of circumstances separately.

First, Little has shown, and SDG&E has not provided any information to the contrary, that the Army Corps of Engineers is studying the area of the project for the presence of UXO. As explained in *McQueen v. Midpeninsula Regional Open Space District* (1988) 202 Cal.App.3d 1136, the presence of hazardous wastes on property being acquired for park and open space purposes is an unusual circumstance for purposes of the exception. SDG&E in this case proposes to dig many large holes into the ground over an extensive part of the former Camp Elliott Area D study area. It is fair to say that the ordinary utility right-of-way area is not a repository of potentially explosive weaponry, just as the court in *McQueen* decided that the ordinary park area was not a repository for PCB. Little is likely to prevail on the claim that the possibility of UXO in the path of the project is an unusual circumstance under CEQA.

Second, Little asserts that a catastrophic fire a year prior to construction is an unusual circumstance for transmission line projects. He has shown that the Cedar fire has had a major impact on vegetation in the area. He argues that this change creates risks of landslides and erosion related to construction in affected areas. SDG&E responds that current regrowth of vegetation is adequate to protect hillsides during the construction and that its construction management practices will protect against erosion. But SDG&E is jumping too far ahead in the analysis. If unusual circumstances exist because of the fire, then the only consequence is that SDG&E's project is not exempt from the PTC requirements. If a PTC is required, SDG&E's construction practices will then be relevant in evaluating the environmental impact of the project in more detail. Little is likely

to prevail on the claim that the Cedar fire is an unusual circumstance under CEQA.

Little also claims that the “environmental resource of critical concern” exception set out in subsection (a) applies to this project because the project may impact on the habitat of the Gnatcatcher, a threatened species. In its Answer to Little’s complaint, SDG&E concedes that “portions of the Project traverse areas containing habitat suitable for the Coastal California gnatcatcher.” SDG&E further asserts that its Subregional Natural Community Conservation Plan (NCCP), a comprehensive plan for management of habitat issues in the San Diego area, ensures that it will comply with all applicable restrictions related to Gnatcatcher habitat. This may or may not ultimately be true, but it is not relevant to the threshold issue of whether the project is exempt from the PTC requirements. Little is likely to prevail on the issue of whether there is a “reasonable possibility that the activity may impact” the Gnatcatcher habitat area.

5.3 Irreparable harm to moving party

Because the potential environmental impacts Little identifies are all impacts from or related to construction, those impacts will have occurred or will be difficult or impossible to mitigate if the project is built while this proceeding is pending. It goes without saying that potentially lethal explosions of UXO constitute irreparable harm. The harm from landslides and/or serious erosion, were they to occur, could be irreparable, depending on their location and severity.

5.4 No substantial harm to other interested parties

SDG&E asserts that it, as well as the public, would be harmed if it could not work on this project during the pendency of this proceeding. SDG&E states

that at least part of the project is needed quickly for reliability purposes, and that deferring construction poses a substantial risk of harm to the transmission system and thus to the public. Because the asserted harm to SDG&E is inseparable from SDG&E's position on the public interest involved, we discuss both below.

5.5 The public interest

Little asserts that without a TRO, this proceeding will be rendered meaningless because SDG&E will have finished constructing the project during the pendency of the case. As noted above, the potential environmental impacts Little identifies are all impacts from or related to construction, which will have occurred or will be difficult or impossible to mitigate once the project is built. Little further observes that, despite the orders to preserve the status quo that were previously entered in this proceeding, SDG&E continues to work on the Scripps Lake underground project, even though that project is coextensive with the undergrounding of new TL 6942. He argues that the public interest in safety, environmental protection, and the good order of Commission proceedings will therefore be advanced by the issuance of a TRO.

SDG&E asserts that the public interest in a reliable electrical transmission system would be damaged by a TRO. SDG&E proposes instead that, for purposes of the TRO request, we consider the project in two parts. The first part is the reconductoring of TL 669 between Scripps Substation and Miramar Substation. SDG&E represents that this is needed for reliability in the short term, as TL 669 has less capacity than TL 6916, which runs from Sycamore Substation to Scripps Substation. Upgrading the capacity of TL 669 to equal that of TL 6916 will allow all available power to flow through TL 6916 and TL 669 from Sycamore Substation to Miramar Substation. SDG&E states that if it could begin

the reconductoring of TL 669 by January 15, 2005, it could complete that work by summer 2005. SDG&E would then voluntarily defer work on new TL 6942 until the completion of this proceeding.

While we appreciate SDG&E's willingness to put forward this proposal, it is not a feasible solution. Although it appeared to be a minor part of the project described in AL 1520-E, the reconductoring of TL 669 is in fact a major part of the actual project that SDG&E is building. We are mindful of SDG&E's concern about reliability. We, too, want SDG&E to be able to improve reliability. The project SDG&E is building, however, may not be eligible for the exemptions claimed in AL 1520-E. Indeed, in this ruling we conclude that, on the present state of the record, the project is unlikely to be eligible for exemption. If we were to adopt SDG&E's suggestion, we would be allowing SDG&E to build a project, prior to a decision on the merits of this complaint, for which legal authorization could be unavailable.

This brings us to our final point on the public interest: the integrity of the Commission's processes. GO 131-D creates a three-tiered system of review of transmission line projects. Projects of 200 kV or more require an application for a certificate of public convenience and necessity. Projects between 50 and 200 kV require a permit to construct. The third category is projects between 50 and 200 kV that qualify for an exemption listed in Section III.B.1. Utilities notify the Commission of exempt projects by advice letter, pursuant to Section XI.B.4.

This system relies on the completeness and accuracy of the submissions by the utilities, especially if the utility proceeds by advice letter. In this proceeding, we have discovered that the information provided in AL 1520-E is quite different from the information that has been provided to date in this proceeding. It is not appropriate for SDG&E to use this proceeding to alter the project described in

AL 1520-E and then have the new project approved in the guise of a compromise about temporary injunctive relief.

We encourage SDG&E to proceed expeditiously to seek appropriate approval for any needed reliability improvements. We suggest that Little and SDG&E make use of the mediation services available through the ALJ Division to aid them in trying to resolve the issues in this case. We also urge the parties to focus their efforts on mediation and on preparation of testimony for the evidentiary hearing, rather than on submitting additional material that cannot be effectively evaluated prior to an evidentiary hearing.

6. Conclusion

After weighing and balancing the above factors, we determine that the status quo should be maintained pending the outcome of this proceeding or until further order of the undersigned or the Commission. We therefore restrain SDG&E from commencing or continuing any construction work on any part of the project it described in AL 1520-E, as explained and expanded in this proceeding, and including the Scripps Lake Underground Conversion Surcharge Project, until this proceeding is concluded, or until further order of the undersigned or of the Commission.

We intend to proceed with this case expeditiously. We will place consideration of this ruling on the agenda of the Commission's next meeting.

Findings of Fact

1. The project described in AL 1520-E to build new TL 6942 and reconductor existing TL 669 is significantly different from the project to build new TL 6942 and reconductor existing TL 669 that SDG&E has described in this proceeding.

2. The project SDG&E is building runs through Area D of the former Camp Elliott, which is the subject of an investigation for unexploded ordnance (UXO) under the federal Formerly Used Defense Sites program.

3. The possibility that UXO will be found in the area of the project renders the circumstances in which SDG&E is building the project unusual.

4. The project SDG&E is building is located in an area that was subject to the Cedar fire of late October and early November 2003.

5. The effects of the Cedar fire in the area of the project render the circumstances in which SDG&E is building the project unusual.

6. There is a reasonable possibility that the project SDG&E is building may impact habitat of the Gnatcatcher.

7. SDG&E's Scripps Lake underground project is coextensive with the majority of the underground portion of new TL 6942.

8. SDG&E is continuing work on the Scripps Lake underground project while this proceeding is pending.

9. Little has sufficiently shown irreparable injury if this ruling does not issue.

10. There will be no substantial harm to other interested parties as a result of this ruling.

11. This ruling will not harm the public interest.

Conclusions of Law

1. Little is likely to prevail on the merits of his claim that SDG&E improperly claimed an exemption under GO 131-D Section III.B.1(e) from the PTC requirements of GO 131-D.

2. Little is likely to prevail on the merits of his claim that the project SDG&E is building is not entitled to exemption from the PTC requirements due to unusual circumstances.

3. Little is likely to prevail on the merits of his claim that the project SDG&E is building is not entitled to exemption from the PTC requirements because the project may impact Gnatcatcher habitat.

4. Little has sufficiently shown irreparable injury if this ruling does not issue.

5. There will be no substantial harm to other interested parties as a result of this ruling.

6. This ruling will not harm the public interest.

IT IS RULED that:

1. San Diego Gas and Electric Company (SDG&E) shall maintain the status quo during the pendency of this proceeding, or until further order of the undersigned Assigned Commissioner and Administrative Law Judge or the Commission.

2. Effective immediately, SDG&E is restrained from performing any work, or having any work performed, on the project it is building, described in Advice Letter 1520-E and explained and expanded in the record of this proceeding, until this proceeding is concluded, or until further order of the undersigned or the Commission.

3. Effective immediately, SDG&E is restrained from performing any work, or having any work performed, on the project it is building known as the Scripps Lake Conversion Surcharge Undergrounding Project until this proceeding is concluded, or until further order of the undersigned or the Commission.

Dated October 15, 2004, at San Francisco, California.

/s/ GEOFFREY F. BROWN
Geoffrey F. Brown
Assigned Commissioner

/s/ ANNE E. SIMON
Anne E. Simon
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties who have provided an electronic mail address, this day served a true copy of the original attached Ruling of Assigned Commissioner and Administrative Law Judge Issuing Temporary Restraining Order on all parties of record in this proceeding or their attorneys of record.

Dated October 15, 2004, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

N O T I C E

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